IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2429 OF 2003
a/w Civil Applciation No.1169 of 2005

M/s Mohini Resorts Pvt Ltd, .. Petitioners

Vs

Shankar Godaji Gore D/H & ors .. Respondents

Mr P.K.Dhakephalkar a/w Mr Madhav Jamdar, for the petitioner.

Mr S.S.Kulkarni, for respondent no.2(a).

CORAM : D.B.BHOSALE,J.
DATE : 19.09.2006

PC:

1. Mr Dhakhephalkar, learned senior counsel, for the petitioners, seeks leave to delete respondent no.4(A)(i)- Praveena Narayan Bhave. Leave is granted. Amendment to be carried out during the course of the day.

2. Heard Mr Dhakephalkar, learned senior counsel for the petitioners and Mr Kulkarni, learned counsel for respondent nos 2(a). None appears for the other respondents though served.

3. By this petition, the petitioners have impugned the order dated 13.4.1994, by which their application at

Exhibit-6 in Darkhast No.1032 of 1980, has been rejected. The application was filed under Order 21, Rule 16 of the Code of Civil Procedure seeking permission to join them as decree holder. My attention was invited to the provisions of Order 21, Rule 16 to contend that the enquiry, contemplated by the first proviso to Rule 16 of Order 21 has not been conducted by the learned Judge while dealing with the application at Exhibit-6. The order shows that there were some deficiencies in the said application. Mr Dhakephalkar, learned senior counsel for the petitioners, submits that they may be given an opportunity to remove deficiencies, if any, in their application at Exhibit-6. Mr Kulkarni, learned counsel for the respondent, submits that the respondent had raised the written objections to the said application of the petitioners. On perusal of the impugned order, it is clear that the learned Judge has not dealt with the application at Exhibit-6 in proper perspective. He ought to have given an opportunity to the petitioners to produce authority on record to present the application at Exhibit-6. Similarly an enquiry ought to have been conducted in the light of the objections and then decided the application. Considering the overall facts and circumstances of the case, in my opinion, interest of justice would be met by the following order.

(a) The order dated 13.4.1994 is quashed and set aside. The application at Exhibit-6 stands restored to file. The petitioners are allowed to place on record the Authority to file application Exhibit-6 on record and to remove deficiencies, if any, in their application under Order 21, Rule 16 of CPC, within four weeks from the date of receipt of this order. The executing court shall decide the said application afresh after conducting an enquiry contemplated by the first proviso appended to Rule 16 of Order 21 of CPC expeditiously.

(b) Consequently, the order dated 28.4.1994 passed on Darkhast No.1032 of 1980 also stands quashed and set aside. Darkhast No.1032 of 1980 stands restored to file. All contentions on merits are kept open.

. With these observations, the writ petition along with the civil application is disposed of.

(D.B.BHOSALE,J.)